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Mr Doug Niven
Senior Executive Leader
Financial Reporting & Audit
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

30 August 2013

Dear Doug,

**Submission – Consultation Paper 209: Resignation, removal and replacement of auditors: Update to RG 26 *Resignation of auditors***

Thank you for the opportunity to comment on ASIC's proposals for revisions to RG 26 *Resignation of auditors*. KPMG sees benefits for ASIC and industry of a shift in ASIC's approach to consent of the resignation by an auditor of a public company or scheme auditor. We believe that benefits in the form of efficiency for ASIC, the audit industry and its clients would be optimised through legislative reform aligning the Australian regime with international practice. That is, removing the obligation for ASIC to consent to resignation, removal and replacement of auditors. Instead, we believe ASIC should be notified of any change, including reasons for the change.

KPMG notes that the possibility of legislative reform has not been discussed in this consultation. On that basis our comments are based on the assumption that ASIC will continue to be required by law to consent to resignation, removal and replacement of auditors. This sets the context of our response to this consultation.

We have commented briefly on the guidance included in draft revised RG 26 on factors associated with early consent circumstances. We encourage ASIC to adopt a merits-based approach when making determinations to grant early consent on a case-by-case basis. We support a reduction in the complexity and administration involved in the resignation and removal process. KPMG believes this can be achieved without negative impact on ASIC's strategic objective of confident and informed investors and financial consumers.

## Executive summary

KPMG acknowledges that ASIC's approach to consent in relation to resignation, removal and replacement of auditors has been designed to ensure that the quality and independence of the audit function are preserved. We understand ASIC is concerned with:

- The risk of impaired audit quality if a change in auditor occurs during the financial year or after the end of the financial year. Further, we note in relation to public companies, ASIC

- seeks to preserve the statutory right of members to select their own auditor at an AGM and not be subject to pressure to appoint the auditor chosen by directors during the year.
- The risk to independence arising from a threat of removal from office by directors of a company who wish to coerce favourable responses from an auditor.

KPMG is supportive of ASIC's desire to expand existing guidance in RG 26 to clarify its approach to consent in relation to the resignation, removal and replacement of auditors. We understand that under the proposed guidance, ASIC will normally consent to:

- Resignation by an auditor of a public company if the resignation takes effect at the next AGM or on an alternative date if there are early consent circumstances. We note that ASIC's consent will be conditional on the company identifying a replacement auditor.
- Resignation and removal of auditors of registered schemes, compliance plans and AFS licensees if the resignation takes effect within one month after the audit report for the financial year is lodged with ASIC, and a replacement auditor has been confirmed.

Our key comments in relation to the consultation paper are as follows:

- KPMG broadly supports the normal timing of when resignations by a public company or scheme auditor should take effect.
- KPMG supports ASIC's approach to making determinations to grant early consent on a case-by-case basis. As set out in our response to proposal B1, we note that the legislative framework does not prescribe the timing for when resignations of auditors are to occur, therefore we would encourage ASIC to adopt a merits-based approach to granting early consent.
- KPMG recommends that two examples in draft revised RG 26 of situations that may not be considered early consent circumstances, be omitted. These are situations where schemes are not audited by the same auditor as the Responsible Entity (Item 1 of Table 3), and non-payment of audit fees (Item 7 of Table 3).
- KPMG agrees with the requirement that ASIC's consent be conditional on confirmation of a replacement auditor. KPMG notes that the obligation to find a replacement auditor lies with the company as prescribed by the Corporations Act 2001 (Cth).
- KPMG broadly agrees with the process for making an application to ASIC for consent and seeks additional guidance detailing ASIC's estimated timeframes for consideration of such applications. As set out in response to proposal B11, this is particularly important where an application for ASIC's consent to resign as scheme auditor is lodged just prior to the end of the financial year of the scheme.

**Specific comments**

KPMG would welcome the inclusion of statements in revised RG 26 indicating that where early consent circumstances described in the guidance are met, ASIC will grant consent without seeking extensive information as part of the application process.

Our comments on the specific proposals and questions raised for comment are set out in Appendix 1 to this letter. We have responded to questions associated with proposals B1, B2, B3, B7, B8, B11 and B13.

We would be pleased to discuss our comments with ASIC. If you have any questions, please contact me on 02 9335 7630, or Tom Seville, KPMG's Head of Regulatory Affairs on 03 9288 5050.

Yours sincerely

Martin McGrath
Partner in Charge, Department of Professional Practice - Audit

**Appendix 1: CP 209 KPMG response**

| Proposal | Question | KPMG Response |
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| **B1**<br>We propose to issue an updated RG 26 to provide guidance on the resignation, removal and replacement of auditors that is consistent with our guidance in the existing RG 26. The attached draft updated RG 26 has been prepared on a basis consistent with our existing approach. | **B1Q1**<br>Do you have any comments or concerns about ASIC's current approach to the resignation and removal of auditors within the context of the legislative requirements? Please outline the nature of any suggested change, the benefits and costs of any change, and the reasons for the change? | We acknowledge the principles underlying ASIC's current approach to granting consent for the resignation and removal of auditors. While we support ASIC's approach to normal consent, we note that the legislative framework does not prescribe the timing for when resignations of public company and scheme auditors are to occur. Further, we note the international approaches to resignation and removal of auditors are less restrictive than ASIC's current approach. In light of this, we recommend that ASIC adopt a simple merits-based approach to its assessment of 'early consent circumstances', when considering whether to grant early consent. We agree that ASIC should only grant early consent if the requirements outlined in RG 26.24 and RG 26.41 are complied with. |
| **B2**<br>Our current approach is that the resignation of an auditor of a public company should normally occur at the AGM or within one month after the lodgement of the auditor's report for registered schemes. | **B2Q1**<br>Do you agree that the resignation of auditors should normally take effect at the AGM for public companies and within one month after the lodgement of the auditor's report for entities that do not hold AGMs? Does this timing create any practical difficulties?<br><br>**B2Q2**<br>Do you agree that the resignation or removal of auditors of registered schemes and compliance plans should normally take effect within one month after the auditor's report is lodged? Does this timing create any practical difficulties? | We agree with the normal timing for resignation by a public company auditor at the next AGM, or within one month after lodgement of the auditor's report for entities that do not hold AGMs.<br><br>We agree with the normal timing for resignation or removal of a scheme auditor within one month after lodgement of the auditor's report, as per paragraph RG 136.41 of RG 136 *Managed investments: Discretionary powers and closely related schemes.* We note that the proposed guidance is more restrictive for removal of a scheme auditor as compared with the current guidance in RG 136 and RG 26. Set out |

| Proposal | Question | KPMG Response |
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| | **B2Q5**<br>Should ASIC consent be given to a resignation at any time of the year? Should there be exemptions, for example, when ASIC is made aware that there is a disagreement between the auditor and the management concerning an accounting treatment or other aspect of the company's reporting obligations? Should other conditions be considered—for example, taking into account the legislative provisions for the removal of auditors? | below in response to B2Q5, we have described an example of a situation where we consider ASIC's consent to a resignation at any time of the year is merited.<br><br>We are aware of occasions where there are administrative errors in ASIC's records in relation to who is the appointed auditor of a registered scheme. As the register of appointed auditors is not available to parties outside ASIC (other than for listed entities), it is not possible for auditors or Responsible Entities to confirm the accuracy of ASIC's records. Specifically, we note that ASIC Connect allows users to perform searches of ASIC's registers. When performing a search on the scheme name or Responsible Entity, the information displayed does not include the name of the appointed auditor. This is inconsistent with the information displayed following a search of an individual registered auditor, which shows information on his/her compliance plan auditor appointments (NB. However, it is not possible to perform a search on the name of an audit firm and obtain similar information).<br><br>We propose that in these circumstances, ASIC grant consent to resignation by the auditor at any time of the year. We recommend ASIC:<br>1 Make the register of appointed auditors of registered schemes publicly available through ASIC Connect.<br>2 Provide an alternative process for correction of administrative errors.<br>3 Update ASIC Form 5137 to provide enhanced guidance to Responsible Entities on how to complete the 'Auditor details' section, which may help to reduce the likelihood of administrative errors occurring. For example, we recommend including instructions that where an audit firm is auditing the scheme, its name (rather than the individual auditor representing the firm) should be recorded. |

| Proposal | Question | KPMG Response |
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| | | If the above situation is not resolved, the auditor conducting the audit will need to act outside the law and regulations by conducting the audit while not registered as the appointed auditor. |
| | **B2Q6**<br>Should audit committees or directors control the timing of the resignation of auditors? To what extent should audit committees or the board of directors be regarded as representing the interests of members in relation to a change of auditor? To what extent should audit committees and directors be responsible for ensuring that audit quality is maintained? | We consider that audit committees and directors have a shared responsibility to ensure that audit quality is maintained. It follows that they should also control the timing of any change in auditor.<br>KPMG's Audit Committee Institute held a series of roundtables earlier in the year which considered the role of an external audit, and an audit committee's role in promoting audit quality. KPMG published on its website a summary of these roundtable discussions, noting that *"Audit committees understand the importance of an independent, objective and robust external audit function, and for external auditors themselves to exhibit the right blend of technical proficiency, diligence and professional integrity... The Roundtables concluded that the audit committee's prime role in this area remains the establishment of good communication with the external auditors, dealing with specific audit-related issues as they arise and removing any obstacles to the smooth and effective functioning of the audit... [A]n external audit is no substitute for a strong system of internal financial and operational controls within an organisation."* |
| **B3**<br>Our current approach is to consent to the resignation of an auditor of a public company only if a replacement auditor has been identified by the company. | **B3Q1**<br>Should ASIC's consent to the resignation of an auditor of a public company be conditional on the company having obtained a possible replacement auditor? If not, how should ASIC comply with its obligation to appoint an auditor? In | While we accept ASIC's consent being conditional on the company having obtained a replacement auditor, we stress that the legislative framework imposes an obligation on the company, rather than the outgoing auditor, to find a replacement auditor under s 327B of the Corporations Act 2001 (Cth) (***the Act***). Therefore, we hope ASIC would not withhold consent, if a situation arose where the company was unable |

| Proposal | Question | KPMG Response |
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| | particular, how should ASIC choose a replacement auditor? | to find a replacement auditor. We are not aware of any occasions where this has occurred.<br>Where a replacement auditor has not been identified by the company, and ASIC uses its power to appoint an auditor under s 327E of the Act, we consider that the identified auditor should have the option to refuse the appointment. This would be consistent with s 331AAC(2) of the Act which concerns ASIC's power of appointment of a scheme auditor and requires the auditor identified as a replacement to consent to the appointment. |
| **B7** Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose to include examples of 'early consent circumstances', where we will give consent to the resignation of an auditor of a public company other than at the AGM, or to the resignation, removal or replacement of an auditor of another entity other than within one month after the audit report is lodged: see Table 2 and Table 3 of the draft updated RG 26. | **B7Q1**<br>Should the draft updated RG 26 include further examples of early consent circumstances?<br>Please outline any such examples and the reasons why they should be included in the updated RG 26. | Concerning Item 1 of Table 3, there may be circumstances where a Responsible Entity changes during the year and seeks to appoint the same auditor for all of its schemes and/or appoint the same auditor as its own auditor, which could produce cost savings that would benefit scheme members. In light of this, we consider it would be appropriate to omit this example from Table 3 and include it in Table 2 as an example of early consent circumstances.<br><br>Secondly, we recommend that Item 7 of Table 3 be omitted as a situation that may not be considered early consent circumstances. In relation to the non-payment of audit fees, we envisage that there may be situations where a self-interest threat could arise, which warrants ASIC granting early consent. As specified at paragraph 35 of CP 209, the potential existence of a self-interest threat is explicitly noted at paragraph 290.223 of APES 110 *Code of ethics for professional accountants*. |
| | **B7Q2**<br>Are there any practical implications of the timing of the resignation of auditors of companies that are responsible entities and their related schemes? | Please refer to our response to B7Q1. |

| Proposal | Question | KPMG Response |
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| | **B7Q3**<br>Do you have any other suggestions about what may or may not constitute early consent circumstances? Please provide reasons supporting each of your comments. | Please refer to our response to B2Q2 which suggests an alternative process for correction of administrative errors. |
| **B8**<br>Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that non-payment of audit fees should be one of the factors indicating that early consent circumstances do not exist: see Table 3 of the draft updated RG 26. | **B8Q1**<br>Do you have any comments on whether unpaid audit fees could be perceived to be a conflict of interest and therefore auditors should be able to apply for consent to resign because of a threat to their independence? | Please refer to our response to B7Q1. |
| | **B8Q2**<br>Should auditors, in this situation, be permitted to resign without a replacement auditor being nominated? Please provide reasons supporting each of your comments. | Please refer to our response to B7Q1. Further, as noted in our response to B3Q1, the legislative framework imposes an obligation on the company, rather than an outgoing auditor, to find a replacement auditor. Should a situation arise where a company has been unable to nominate a replacement auditor, we recommend ASIC not withhold consent. |
| **B11**<br>We are seeking to collect information on any other changes that should be made within the context of our current fundamental approach if that approach is retained. | **B11Q1**<br>Do you have any other suggestions for changes to the draft updated RG 26 in the context of our current approach? | KPMG would welcome the inclusion of statements in revised RG 26 indicating that where early consent circumstances described in the guidance are met, ASIC will grant consent without seeking extensive information as part of the application process. This will assist to reduce the complexity and administration involved in the resignation and removal process.<br><br>We propose that ASIC should include guidance in Section H of RG 26 detailing estimated timeframes for consideration of applications for consent. We consider this is particularly helpful in the context of an application for ASIC's consent to resign as scheme auditor which is |

| Proposal | Question | KPMG Response |
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| | | lodged just prior to the end of the financial year of the scheme. |
| **B13**<br>Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that:<br>(a) an application for consent to the resignation or removal of an auditor of a registered scheme or compliance plan should be lodged before the end of the financial year of the scheme for it to take effect, following our consent, within one month after the auditor's report for that year is lodged; | **B13Q1**<br>Do you have any comments on our proposed timing for when an application for consent to, or approval of, the resignation, removal or replacement of an auditor should be lodged? | Other than in relation to the correction of administrative errors, we support the proposed timing for when an application for consent should be lodged, in relation to resignation or removal of a scheme auditor. |
| | **B13Q2**<br>Do you have any comments on our proposed timing for when the resignation, removal or replacement of an auditor will take effect, following our consent or approval? | Other than in relation to the correction of administrative errors, we support the proposed timing for when the resignation, removal or replacement of a scheme auditor will take effect, following consent. |
| If the resignation, removal or replacement of an auditor of a registered scheme or compliance plan, AFS licensee or credit licensee is proposed to take effect on a date other than within one month after lodgement of the auditor's report, early consent circumstances must exist: see draft updated<br>RG 26.43–RG 26.44 (registered schemes), RG 26.56–RG 26.59 (AFS licensees) and RG 26.71–RG 26.73 (credit licensees). | **B13Q4**<br>Should we allow consent at any time even if early consent circumstances do not exist? | Further to our response to B1Q1, we anticipate that ASIC would use the situations describing early consent circumstances in Tables 2 and 3 as a guide only. We note that ASIC will make determinations to grant consent on a case-by-case basis, and we recommend ASIC adopt a merits-based approach when making a determination. |
| | **B13Q5**<br>Do you have any comments on our proposed requirement for early consent circumstances to exist for the resignation, removal or replacement of an auditor to take effect on a date other than within one month after lodgement of the audit report? Please provide reasons supporting each of your comments. | Please see our response to B2Q2. |